

In the Matter of Merchant Mariner's Document No. Z-493198-D1 and  
all other Seaman Documents

Issued to: MARVIN DITTMAR

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1297

MARVIN DITTMAR

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 22 May 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for three months on nine months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a carpenter on board the United States SS CONSTITUTION under authority of the document above described, on 2 April 1961, Appellant addressed the Chief Mate with profane and abusive language.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Chief Mate, the testimony of the bow lookout, and a certified copy of an entry in the ship's official Logbook. The lookout testified that he did not hear any profane or abusive language.

In defense, Appellant offered in evidence his testimony and that of another member of the crew who was not at the scene of the alleged offense. Appellant denied having used any profane or abusive language. He stated that the Chief Mate wanted Appellant removed from the ship because of his claims for overtime pay.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved.

FINDINGS OF FACT

On 2 April 1961, Appellant was serving as a carpenter on board the United States SS CONSTITUTION and acting under authority of his

document while the ship was at sea approaching Beirut, Lebanon.

One of Appellant's duties was to prepare the anchors for letting go before entering port. On this date, Appellant was called in time but he was about ten minutes late reaching the bow. The Chief Mate and an able seaman serving as lookout were the only other persons in the vicinity. The Chief Mate asked Appellant what his problem was and why he was late. Appellant replied that he had no problem and was getting oil for the anchor chain. Appellant then angrily addressed the Chief Mate with profane and abusive language to the effect that Appellant should have been called earlier, he refused to be deceived as others had been by the Chief Mate, and Appellant was not misled by the Chief Mate's mistaken impression that he is an intelligent person. During this, the Chief Mate was standing between the bow lookout and Appellant. The Mate was closer to the lookout than to the Appellant.

Appellant's prior record consists of an admonition in 1945 for insolence to a ship's officer; a probationary suspension in 1954 for disobeying a lawful order of a superior officer and creating a disturbance due to drunkenness.

#### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner's decision was not justified because the only disinterested witness, the bow lookout, gave positive testimony that Appellant used no such language as alleged; the burden of proof beyond a reasonable doubt was not sustained; it was improper for the Examiner to impeach a Government witness (the lookout) since the Government was bound by the testimony of its own witness. The language allegedly used was not "abusive". These words contained nothing personal or derogatory. The Chief Mate admitted using this type of language.

APPEARANCE ON APPEAL:      Bonner,      Bonner      and      Clements      of  
                                 Minneapolis      Minnesota,      by      Paul      F.  
                                 Clements, Esquire, of Counsel.

#### OPINION

Questions concerning the credibility of witnesses are for the trier of the facts who saw and heard the witnesses and his determinations will not be set aside unless clearly erroneous. The Examiner accepted the version of the Chief Mate as to what was said by Appellant (R. 10), he rejected Appellant's denial that he used any such language (R. 45), and he was not convinced of the truth of the lookout's testimony that he only heard Appellant say he had no problem and had gone to get some oil (R. 26). The Examiner also

stated he did not believe the Chief Mate falsely accused Appellant of this offense because he submitted overtime claims which the Chief Mate contested.

The evidence accepted by the Examiner constitutes the substantial evidence which is required in these administrative proceedings rather than proof beyond a reasonable doubt. The Examiner was not bound to find that Appellant said only what the lookout stated he heard. Professor Wigmore states that one's own witness may be contradicted by others (Wigmore on Evidence, 3d Ed., sec. 907) and that:

"This primitive notion a party must stand or fall by the utterance of his witness, resting on no reason whatever, but upon mere tradition, and irrationally forbidding any attempt to question the utterances of one's own witness, was obliged to yield its ground before reason and common sense \* \* \*." Sec. 898.

As found above, Appellant angrily cast reflection upon the Chief Mate's integrity, ability and competence in his position. It is my opinion that this constituted abusive and insulting language which justified the conclusion that Appellant was guilty of misconduct. Appellant admits that the language found to have been used contains profanity. Evidence that the Chief Mate occasionally, and improperly, addressed members of the crew with profane and abusive language did not justify Appellant's conduct.

#### ORDER

The order of the Examiner dated at New York, New York, on 22 May 1961, is AFFIRMED.

Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 23rd day of March 1962.